REMARKS

Status of the Claims

Claims 1-10 and 14-16 are under examination

Claims 1-10 and 14-16 stand rejected under 35 U.S.C § 103 (a) as being prima facie obvious over McClure et al. (US 6,696,464).

Claims 14-16 stand rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-10 and 14-16 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 15, 52 and 53 US Patent No. 6,696,464.

Claims 1-10 and 14-16 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27, 30 and 31 of copending US Patent Application No. 10/649,236.

Claim 14 has been amended.

Claims 15 and 16 have been canceled.

Rejection under 35 U.S.C § 103 (a)

Claims 1-10 and 14-16 stand rejected under 35 U.S.C § 103 (a) as being prima facie obvious over McClure et al. (US 6,696,464). The present application was filed August 27, 2003, which is after to November 29, 1999, therefore a rejection under 35 U.S.C § 102(e)/103 or 35 U.S.C § 102(f)/103 are precluded by 35 U.S.C § 103(c). 35 U.S.C § 103(c) states:

> (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

From the face of the patent it can be seen that McClure et al. (US 6,696,464) is assigned to Pfizer, Inc. The recorded assignment for McClure et al. (US 6,696,464) is referenced as Reel/Frame 013856/0709. In the present application the assignee is named as Pfizer Inc. It is evident that 35 U.S.C § 103(c) is applicable since the subject matter and the claimed invention were, at the time the invention was made, under obligation to be assigned to Pfizer, Inc. An obviousness rejection pursuant to 35 U.S.C § 103(a) is improper because 35 U.S.C § 103(c) precludes it. Applicants respectfully request withdrawal of this rejection.

Rejection under 35 U.S.C § 112, second paragraph

Claims 14-16 stand rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 has been amended to delete the use limitation. Claims 15 and 16 have been canceled. In view of these amendments, it is believed that this rejection has been overcome. Applicants respectfully request withdrawal of this rejection.

Rejection under judicially created obviousness-type double patenting

Claims 1-10 and 14-16 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 15, 52 and 53 US Patent No. 6,696,464.

Claims 1-10 and 14-16 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27, 30 and 31 of copending US Patent Application No. 10/649,236.

A Terminal Disclaimer and a Provisional Terminal disclaimer are enclosed to further the allowance of the application. Without acquiescing to the propriety of this rejection, applicants submit herewith a Terminal Disclaimer and a Provisional Terminal Disclaimer, which is believed sufficient to obviate this rejection.

Conclusion

For all of the foregoing reasons, it is believed that the present claims are in condition for allowance, and it is respectfully requested that the application be passed to issue.

If the Examiner believes a telephonic interview with Applicant's representative would aid in the prosecution of this application, he is cordially invited to contact Applicant's representative at the below listed number.

Respectfully submitted,

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